

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

HERBERT WAKEFIELD

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 546 MDA 2013

Appeal from the Judgment of Sentence February 12, 2013
In the Court of Common Pleas of Berks County
Criminal Division at No(s): CP-06-CR-0001018-2012

BEFORE: PANELLA, J., MUNDY, J., and PLATT, J.*

MEMORANDUM BY MUNDY, J.:

FILED DECEMBER 12, 2013

Appellant, Herbert Wakefield, appeals from the February 12, 2013 aggregate judgment of sentence of two and one-half to 11 years' imprisonment after he was found guilty of aggravated assault, simple assault, harassment, and criminal mischief.¹ After careful review, we affirm.

The trial court summarized the relevant factual history of this case as follows.

Here, the record reflects that Robert Sutliff was working as a corrections officer at Berks County Prison on December 24, 2011. [Appellant], who was an inmate at the prison, was showering when Officer Sutliff noticed that [Appellant] had a t-shirt with

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S.A. §§ 2702(a)(3), 2701(a)(1), 2709(a)(1), and 3304(a)(5), respectively.

ripped sleeves, which was against regulation. Officer Sutliff informed [Appellant] that he would be cited for damaging the t-shirt, and then walked downstairs to talk to Officer Remp and Officer Szal.

[Appellant] was showering alone in a shower that had a metal frame and a locked plexiglass door. Officer Sutliff heard [Appellant] banging on the plexiglass. As a result, he proceeded back upstairs to the shower area. Officer Sutliff observed that [Appellant] had broken out of the shower and that ... he was standing in a defensive stance with clenched fists. Officer Sutliff approached [Appellant], who punched Officer Sutliff in the chest. [Appellant] then wrapped his arms around Officer's Sutliff's thighs and lifted Officer Sutliff into the air. Officer Sutliff was able to hit [Appellant] in the face with his forearm, which knocked [Appellant] to the ground. Thereafter, following a short struggle, Officer Sutliff, Officer Remp, and Officer Szal were able to secure [Appellant].

As a result of the altercation, Officer Sutliff suffered injuries to his ankle and to his back. Pain from the injuries lasted for approximately one to one and one-half weeks. In addition, Officer Sutliff's glasses were broken ..., and the Berks County Prison's second floor Delta Unit Shower was damaged.

Trial Court Opinion, 5/21/13, at 3-4 (internal citations omitted).

On March 30, 2012, the Commonwealth filed an information charging Appellant with the above-mentioned offenses. On February 11, 2013, Appellant proceeded to a two-day jury trial, at the conclusion of which the jury found Appellant guilty of aggravated assault, simple assault, and criminal mischief. The trial court found Appellant guilty of harassment as a summary offense. On February 12, 2013, the trial court imposed an

aggregate sentence of two and one-half to 11 years' imprisonment.² On February 21, 2013, Appellant filed a timely post-sentence motion. On February 25, 2013, the trial court entered an order denying Appellant's post-sentence motion. On March 27, 2013, Appellant filed a timely notice of appeal.³

On appeal, Appellant raises one issue for our review.

Was the evidence sufficient to convict [Appellant] of aggravated assault and criminal mischief?

Appellant's Brief at 5.

We begin by noting our well-settled standard of review.

As a general matter, our standard of review of sufficiency claims requires that we evaluate the record in the light most favorable to the verdict winner giving the [Commonwealth] the benefit of all reasonable inferences to be drawn from the evidence. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty. Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.

² The trial court imposed two to ten years' imprisonment for aggravated assault, a consecutive six to twelve months' imprisonment for criminal mischief, and no further penalty on the remaining charges.

³ Appellant filed a Rule 1925(b) statement.

The Commonwealth may sustain its burden by means of wholly circumstantial evidence. Accordingly, [t]he fact that the evidence establishing a defendant's participation in a crime is circumstantial does not preclude a conviction where the evidence coupled with the reasonable inferences drawn therefrom overcomes the presumption of innocence. Significantly, we may not substitute our judgment for that of the fact finder; thus, so long as the evidence adduced, accepted in the light most favorable to the Commonwealth, demonstrates the respective elements of a defendant's crimes beyond a reasonable doubt, the appellant's convictions will be upheld.

Commonwealth v. Rahman, 75 A.3d 497, 500-501 (Pa. Super. 2013) (internal quotation marks and citations omitted).

Prior to addressing the merits of Appellant's claim, we must first determine whether Appellant has complied with Pennsylvania Rule of Appellate Procedure 1925(b) to preserve this issue for our review. Rule 1925(b) by its text requires that Rule 1925(b) statements "identify each ruling or error that the appellant intends to challenge with sufficient detail to identify all pertinent issues for the judge." Pa.R.A.P. 1925(b)(4)(ii); **see also *Commonwealth v. Reeves***, 907 A.2d 1, 2 (Pa. Super. 2006) (stating "[w]hen a court has to guess what issues an appellant is appealing, that is not enough for meaningful review[]"), *appeal denied*, 919 A.2d 956 (Pa. 2007). Any issues not raised in accordance with Rule 1925(b)(4) will be deemed waived. Pa.R.A.P. 1925(b)(4)(vii). Our Supreme Court has made clear that Rule 1925(b) is a bright-line rule. ***Commonwealth v. Hill***, 16

A.3d 484, 494 (Pa. 2011). Additionally, with regard to claims pertaining to the sufficiency of the Commonwealth's evidence, we have stated as follows.

In order to preserve a challenge to the sufficiency of the evidence on appeal, **an appellant's Rule 1925(b) statement must state with specificity the element or elements upon which the appellant alleges that the evidence was insufficient.** Such specificity is of particular importance in cases where, as here, the appellant was convicted of multiple crimes each of which contains numerous elements that the Commonwealth must prove beyond a reasonable doubt.

Commonwealth v. Garland, 63 A.3d 339, 344 (Pa. Super. 2013) (internal quotation marks and citations omitted; emphasis added).

In the case *sub judice*, on April 2, 2013, the trial court entered an order directing Appellant to file a Rule 1925(b) statement within 21 days of said order. Appellant filed a timely counseled Rule 1925(b) statement on April 11, 2013 in which Appellant only stated that "[t]he verdict was contrary to the weight and sufficiency of the evidence."⁴ Appellant's Rule 1925(b)

⁴ On April 17, 2013, Appellant filed a *pro se* Rule 1925(b) statement. As Appellant was represented by counsel at that time, said filing was a nullity. ***Commonwealth v. Ali***, 10 A.3d 282, 293 (Pa. 2010) (citation omitted). Even if it were not a nullity, Appellant's *pro se* statement merely contains a long list of one-line "blurbs" that would not comply with Rule 1925(b)'s mandate. ***See Commonwealth v. Hansley***, 24 A.3d 410, 415 (Pa. Super. 2011) (stating "the Rule 1925(b) statement must be 'specific enough for the trial court to identify and address the issue [an appellant] wishe[s] to raise on appeal[.]'" (citation omitted), *appeal denied*, 32 A.3d 1275 (Pa. 2011). We further note that even if we were to consider Appellant's *pro se* statement, it does not contain any averments as to the sufficiency of the Commonwealth's evidence.

statement, 4/11/13, at 1. Based on our cases, we are constrained to conclude that Appellant has not complied with Rule 1925(b) because his statement fails to specify which elements of which offenses the Commonwealth failed to prove beyond a reasonable doubt. **See *Garland, supra*** (concluding that Garland's bald Rule 1925(b) statement that "[t]he evidence was legally insufficient to support the convictions[]" was non-compliant with Rule 1925(b)); ***Commonwealth v. Williams***, 959 A.2d 1252, 1256 (Pa. Super. 2008) (concluding that Williams' bald Rule 1925(b) statement that "[t]here was insufficient evidence to sustain the charges of Murder, Robbery, VUFA no license, and VUFA on the streets ... [t]hus [Appellant] was denied due process of law[]" was non-compliant with Rule 1925(b)). Therefore, we cannot reach the merits of Appellant's claim.⁵

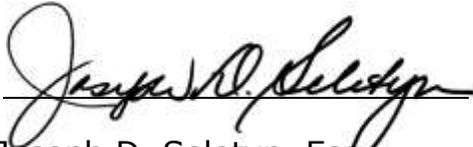
⁵ Even if we were to reach the merits of Appellant's claim, he would not be entitled to any relief. Appellant avers the Commonwealth failed to prove that he intended to cause Officer Sutliff bodily injury. Appellant's Brief at 8. However, the testimony in light most favorable to the Commonwealth revealed that Appellant first punched Officer Sutliff in the right pectoral with his fist, among other infractions. N.T., 4/11/13, at 18; **see also *Commonwealth v. Brown***, 24 A.3d 544, 560 (Pa. Super. 2011) (stating that for aggravated assault "intent may be shown by circumstances which reasonably suggest that a defendant intended to cause injury[]") (citation omitted).

As to the criminal mischief conviction, Appellant avers that the Commonwealth failed to establish who owns the shower door that was damaged. Appellant's Brief at 9. However, in our view, because there was no dispute that the incident took place in the Berks County Prison, the jury was permitted to infer that the shower contained therein was government property. Appellant also argues, without any citation to other legal
(Footnote Continued Next Page)

Based on the foregoing, we conclude Appellant's sole issue on appeal is waived for failure to comply with Rule 1925(b). Accordingly, the trial court's February 12, 2013 judgment of sentence is affirmed.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/12/2013

(Footnote Continued) _____

authority, that the prison shower is not covered by Section 3304(a)(5) because it does not list public property in the subsection, but public property is mentioned in Sections 3304(a)(4) and 3304(a)(6). **Id.** Viewing the record in the light most favorable to the Commonwealth, we conclude the trial court properly concluded the Berks County Prison's shower fell within the boundaries of Section 3304(a)(5). Nevertheless, we would reject this argument as well because this Court has previously held that the Commonwealth may proceed under the more general subsection at Section 3304(a)(5) even if a defendant's conduct might violate a more specific provision of the criminal mischief statute. **In re N.W.**, 6 A.3d 1020, 1026 (Pa. Super. 2010); **accord** 42 Pa.C.S.A. § 9303 (stating, "where the same conduct of a defendant violates more than one criminal statute, the defendant may be prosecuted under all available statutory criminal provisions without regard to the generality or specificity of the statutes[]").